Sin Hong Huat Industries v Berjaya General Insurance Bhd

HIGH COURT (ALOR SETAR) — WRIT OF SUMMONS NO MT3–22–160 OF 2004
ZAMANI A RAHIM J
12 OCTOBER 2010

Evidence — Documentary evidence — Admissibility of — Statements — Statements recorded from plaintiff's workers — Person recording statements cannot be located despite reasonable efforts — Statements made against plaintiff's pecuniary interest — Statements relevant in determining whether plaintiff breached terms of insurance policy — Whether statements admissible — Evidence Act 1950 s 32(1)(c)

Insurance — Fire insurance — Repudiation of liability — Breach of policy warranties by insured — Compliance with warranties a condition precedent to insurer's liability under policy — Whether insurer entitled to repudiate liability

Insurance — Fire insurance — Policy — Claim on policy — Repudiation of liability — Breach of policy warranties by insured — Compliance with warranties a condition precedent to insurer's liability under policy — Whether insurer entitled to repudiate liability

This suit was brought by the plaintiff against the defendant for the insurance money payable to them under a fire insurance policy as a result of a fire which broke out at the plaintiff's factory. The policy schedule for the insurance policy incorporated the requirements of FEA Warranty I, FEA Warranty II and FEA Warranty III ('the warranties') whereby a discount 12.5% on insurance premium was given to the plaintiff for its warranty to comply with the warranties. The issues in dispute were whether the plaintiff had breached the requirements of the warranties and whether the defendant was entitled in law to repudiate the plaintiff's claim for breaching the requirements of the warranties. The plaintiff objected to the marking of IDD37 as exhibits. IDD37 consisted of Appendix B1 — B11 which were statements recorded from the partners of the plaintiff and the plaintiff's former foreign workers from Myanmar. In Appendix B1, SP4 (a partner of the plaintiff) had admitted that: (i) the plaintiff did not have any maintenance people responsible for the fire fighting at the factory; (ii) the plaintiff relied on Kejuruteraan Union Fire Langkawi Sdn Bhd to carry out maintenance; and (iii) the plaintiff did not have any fire fighting squad. These statements were recorded by one Sriganesa was working as a loss adjuster for a firm of loss adjusters ('McLaren') which was

appointed by the defendant to investigate the plaintiff's claim. However, Sriganesa had left the employment of McLaren and could not be located or traced.

Held, dismissing the plaintiff's claim with costs to be taxed:

(1) The defendant had adduced sufficient evidence to prove that reasonable efforts had been made to locate Sriganesa but he could not be located despite several efforts (see para 10).

(2) The statements made by SP4 and his foreign workers were statements against the interest of the maker ie the plaintiff (s 32(1) of the Evidence Act 1950 ('EA50') Illustration (e)). The statements given by the foreign workers (appendix B4 – B11) also confirmed that they had never seen anyone performing any maintenance works on the fire fighting facilities and they were never trained to use any of the fire fighting equipments. These statements were clearly against the plaintiff's pecuniary interest and were relevant in determining whether the plaintiff had breached the terms of the warranties. By virtue of s 32(1)(c) of the EA50 IDD37 was admissible and be marked as exh D37 (see paras 12–13).

(3) An insurer is entitled to decline liability under an insurance policy if the insured has breach a warranty of the insurance policy (see para 14).

(4) At all material time, the plaintiff had enjoyed discounted insurance premiums on the condition that the plaintiff must comply with the warranties. The evidence clearly showed that the plaintiff had breached the terms of the warranties whose strict compliance was condition precedent to the defendant's liability under the insurance policy. As such, the plaintiff failed to discharge its burden of proving its claim on the balance of probability (see paras 38–39).

[Bahasa Malaysia summary

Guaman ini telah dibuat oleh plaintif terhadap defendan untuk wang insurans yang harus dibayar kepada mereka di bawah polisi insurans kebakaran akibat daripada kebakaran yang berlaku di kilang plaintif. Jadual polisi bagi polisi insurans tersebut menyatakan keperluan Waranti I FEA, Waranti II FEA dan Waranti III FEA ('waranti-waranti') di mana diskaun sebanyak 12.5% terhadap premium insurans telah diberikan kepada plaintif sebagai waranti untuk mematuhi waranti-waranti tersebut. Isu-isu dalam pertikaian adalah sama ada plaintif telah bercanggah dengan keperluan waranti-waranti dan sama ada defendan berhak dalam undang-undang untuk membatalkan tuntutan plaintif kerana bercanggah dengan keperluan waranti-waranti. Plaintif membantah penandaan IDD37 sebagai ekshibit. IDD37 merangkumi lampiran B1–B11 yang mana merupakan kenyataan yang direkod daripada rakan kongsi-rakan kongsi plaintif dan bekas pekerja-pekerja plaintif daripada Myanmar. Dalam lampiran B1, SP4 (rakan kongsi plaintif) telah mengakui

bahawa: (i) plaintif tidak mempunyai orang yang bertanggungjawab untuk mengendali pecegahan api di kilang tersebut; (ii) plaintif bergantung kepada Kejuruteraan Union Fire Langkawi Sdn Bhd untuk menjalankan pengendalian; dan (iii) plaintif tidak mempunyai apa-apa pasukan bomba. Kenyataan-kenyataan ini telah direkod oleh Sriganesa yang mana bekerja sebagai adjuster kerugian bagi firma adjuster kerugian ('McLaren') yang dilantik oleh defendan untuk menyiasat tuntutan plaintif. Walau bagaimanapun, Sriganesa telah berhenti daripada McLaren dan tidak boleh dihubungi dan dikesan.

Diputuskan, menolak tuntutan plaintif dengan kos untuk ditetapkan:

(1) Defendan telah mengemukakan keterangan yang mencukupi untuk membuktikan terdapat usaha yang mencukupi telah dibuat untuk mengesan Sriganesa tetapi dia tidak dapat dikesan meskipun beberapa cubaan telah dilakukan (lihat perenggan 10).

(2) Kenyataan-kenyataan yang dibuat oleh SP4 dan pekerja-pekerja asingnya adalah kenyataan yang berlawanan dengan faedah pembuatnya iaitu plaintif (s 32(1) Akta Keterangan 1950 ('AK50') Ilustrasi (e)). Kenyataan-kenyataan yang diberikan oleh pekerja-pekerja asing (lampiran B1–B11) juga mengesahkan bahawa mereka tidak pernah melihat sesiapa melakukan kerja pengendalian ke atas kemudahan bomba dan mereka tidak pernah dilatih untuk menggunakan alat-alat mencegah kebakaran. Kenyataan-kenyataan ini dengan jelas berlawanan dengan kepentingan wang plaintif dan adalah relevan dalam menentukan sama ada plaintif telah melanggar terma-terma waranti. Menurut s 32(1)(c) AK50 IDD37 boleh diterima masuk dan ditanda sebagai eksh D37 (lihat perenggan 12–13).

(3) Penanggung insurans berhak menolak liabiliti di bawah polisi insurans sekiranya orang yang diinsuranskan telah memungkiri waranti polisi insurans (lihat perenggan 14).

(4) Pada setiap masa matan, plaintif telah menikmati premium-premium insurans yang telah didiskaunkan atas syarat bahawa plaintif boleh mematuhi waranti-waranti. Keterangan jelas menunjukkan bahawa plaintif telah melanggar terma-terma waranti yang mana pematuhan tegas merupakan prasyarat kepada liabiliti defendan di bawah insurans polisi. Oleh demikian, plaintif gagal melepaskan beban untuk membuktikan tuntutannya atas imbangan kebarangkalian (lihat perenggan 38–39).]

Notes

For cases on admissibility of documentary evidence, see 7(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 1350–1371.

For cases on repudiation of liability, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 156–159.

Cases referred to

DA Duncan v PP [1980] 2 MLJ 195, FC (refd)
Mohd Zaiham bin Mislan v PP [2009] 6 MLJ 737; [2010] 1 CLJ 1, FC (refd)
PP v Lim Bong Kat & Anor [1992] 4 CLJ 2173, HC (refd)
Putra Perdana Construction Sdn Bhd v AMI Insurance Bhd & Ors [2005] 2 MLJ 123; [2004] 8 CLJ 538, HC (refd)
Teck Liong (EM) Sdn Bhd v Hong Leong Assurance Sdn Bhd and another suit [2002] 1 MLJ 300; [2001] 7 CLJ 457, HC (refd)

Legislation referred to

Evidence Act 1950 s 32, 32(1), (1)(c), Illustration (e)

S Annie Santha (S Annie & Associates) for the plaintiff.
B Balakumar (Wong Wai Leong with him) (Azim, Tunku Farik & Wong) for the respondent.

Zamani A Rahim J:

INTRODUCTION

[1] This is a suit brought by the plaintiff against the defendant for the insurance money payable to them vide fire insurance policy No 03 DSP/FFA410169 as a result of a fortuitous fire which broke out at the plaintiff's factory on 5 September 2003 at about 3.20 am.

BRIEF FACTS

[2] The plaintiff bought a fire insurance policy No 02 DSP/FFA4100034 ('first policy') to insured its factory located at Plot 584, Jalan Cerdana 4/6, Kawasan Perindustrian Cendana, Mukim Pinang Tunggal, 08000 Sungai Petani, Kedah ('the factory') from 7 October 2001 to 6 October 2002. Upon expiry of first policy, the plaintiff at its own election continued to insure the factory with the defendant vide fire insurance policy No 03DSP/FFA410169 which covers the periods from 7 October 2002 to 6 October 2003 ('renewal policy').

[3] The policy jacket for both the first policy and the renewal policy was marked as exh P26 and the policy schedules for both first policy were respectively marked as exhs P21 & D33. The policy schedule for the first policy incorporates the requirements of FEA Warranty I and FEA Warranty II. As for

the renewal policy, the policy schedule incorporates the requirements of FEA Warranty I, FEA Warranty II and FEA Warranty III whereby a discount 12.5% on insurance premium was given to the plaintiff for its warranty to comply with FEA Warranty I, FEA Warranty II and FEA Warranty III. The terms of FEA Warranty I, FEA Warranty II and FEA Warranty III are marked as exh D46. The policy jacket, policy schedule and the terms of FEA Warranty I, FEA Warranty II and FEA Warranty III form the contract of insurance between the plaintiff and the defendant.

[4] The trial proceeded only on the issue of liability as parties, have agreed on the issue of quantum whereby the quantum of the plaintiff's loss was recorded at RM1.67m.

[5] The issues to be considered are as follows:

(a) Whether the plaintiff has breached the requirements of FEA Warranty I, FEA Warranty II or FEA Warranty IN under the renewal policy; and

(b) Whether the defendant is entitled in law to repudiate the plaintiff's claim under the renewal policy for breaching the requirements of FEA Warranty I, FEA Warranty II or FEA Warranty III.

LIABILITY

[6] The defendant has repudiated liability on the grounds stated, hereunder.

[7] Despite the defendant presenting the original documents, the plaintiff objected to the marking of IDD37 as exhibits. IDD37 consists of Appendix B1 – B11 (with the exception of Appendix B2 and B3 which were marked as Exhibits D42 and 43 respectively) which are statements recorded from the partners of the plaintiff (namely SP4, SP8 and Tay Boon Seng) and the plaintiff's former foreign workers from Myanmar. Section 32 of the Evidence Act 1950 needs to be considered here.

[8] In the present claim, Appendix B1, B4 – B11 were signed statements made by SP4 and his foreign workers on behalf of the plaintiff. These statements were recorded by one Ganeson a/l Khow Keah (also known as Sriganesa). At the time the statements were recorded by Sriganesa, he was working as a loss adjuster for McLaren Saksama (M) Sdn Bhd ('McLaren'), a firm of independent and licensed loss adjusters which was appointed by the defendant to investigate the plaintiff's claim. However, Sriganesa had left the employment of McLaren and could not be located or traced.

[9] The defendant via SD4 (who is an employee of McLaren) has made four attempts to locate him at his last known address but to no avail. During his last attempt on 27 July 2010, SD4 was informed, by Sriganesa's mother that Sriganesa had a family dispute with her: and has left the house with his wife about six months prior to that. She is neither aware of his present whereabouts nor has his contact details. She merely heard rumours that he may have moved to Singapore but she could not confirm the same. SD4 has left his calling card; with her, hoping that Sriganesa will call or visit his mother and she would then pass SD4's calling card to him. SD4 testified that till to date, he did not receive any telephone calls from Sriganesa or his mother.

[10] Thus the defendant has adduced sufficient evidence to prove that reasonable efforts have been made to locate Sriganesa but he could not be located despite several efforts. The efforts made are in line with the decisions in *DA Duncan v Public Prosecutor* [1980] 2 MLJ 195 and *Public Prosecutor v Lim Bong Kat & Anor* [1992] 4 CLJ 2173. SD4's evidence on this issue was hardly challenged by the plaintiff's counsel during cross-examination.

[11] Further, the statements made by SP4 and his foreign workers are statements against the interest of the maker ie the plaintiff — see Illustration (e) of s 32(1) of Evidence Act 1950. In Appendix B1, SP4 has admitted as follows:

(a) The plaintiff does not have any maintenance people responsible for the fire fighting at the factory.

(b) The plaintiff relies on Kejuruteraan Union Fire Langkawi Sdn Bhd to carry out maintenance.

(c) The plaintiff does not have any fire fighting squad. This contradicts SP4's evidence-in-chief where he testified that the plaintiff's own fire fighting squad consist of the directors and the workers (*answer to Question 120 – exh P31*); and

(d) The plaintiff did not challenge the content of Appendix B1 despite the statement bearing SP4's signature.

[12] The statements given by the foreign worker (Appendix B4 – B11) also confirmed that they have never seen anyone performing any maintenance works on the fire fighting facilities and they were never trained to use any of the fire fighting equipments.

[13] These statements are clearly against the plaintiff's pecuniary interest and are relevant in determining whether the plaintiff has breached the terms of FEA Warranty I, FEA Warranty II and FEA Warranty III. By virtue of

s 32(1)(c) of the Evidence Act 1950 IDD37 is admissible and be marked as *exh D37*. What remain is the weight to be given to the contents of the statements therein.

[14] It is settled law that an insurer is entitled to decline liability under an insurance policy if the insured has breach a warranty of the insurance policy. In *Teck Liong (EM) Sdn Bhd v Hong Leong Assurance Sdn Bhd and another suit* [2002] 1 MLJ 300; [2001] 7 CLJ 457, the High Court held that:

> [1] Warranty 9(A) of the fire policy was a condition precedent to the right of the insured to recover any sum insured claimed thereunder. Since the plaintiff did not hold any valid trading license from the local authority to operate its business on the date of the fire, the plaintiff had breached warranty 9(a) and thus, the defendant was entitled to repudiate liability to the plaintiff in respect of this claims.

His Lordship Ramli Ali JC (as he then was) went on to state that:

> The preamble of the relevant insurance policy provides as follows:
>
> > The company agrees (subject to the conditions contained herein or endorsed or otherwise expressed hereon which conditions shall so far as the nature of them respectively will permit be deemed to be conditions precedent to the right of the Insured to recover hereunder) that if the property insured described in the said Schedule or any of such property be destroyed or damaged by FIRE … the Company will pay or make good to the Insured the value of the property at the time of the happening of its destruction or the amount of such damage.

Warranty 9(a) of the same policy provides:

> Warranty that during the currency of this policy the Insured shall hold such Licence or Licences as is or are required by the Local Municipal or other Authorities and shall fully comply the conditions and requirements thereof at all times.
>
> By virtue of the preamble of the policy, Warranty 9(a) of the policy shall be deemed to be condition precedent to the right of the insured to recover any sum insured claimed thereunder.

[15] Similarly, in the present claim the policy jacket for both the first policy and the renewal policy expressly state that:

> PROVIDED ALWAYS that the due observance and fulfillment of the terms and conditions and endorsements of this Policy in so far as they relate to anything to be done or complied with the Insured shall be condition precedent to any liability of the Company to make under this Policy — see Exhibit P26.

[16] In addition, in the case of *Putra Perdana Construction Sdn Bhd v AMI Insurance Bhd & Ors* [2005] 2 MLJ 123; [2004] 8 CLJ 538, the issue is whether

the plaintiff had breached condition 29 of the policy which is similar to the FEA Warranties in the present claim. His Lordship Ramli J (as he then was) dismissed the claim and held that:

> [1] Condition 29 of the policy, read with General Condition 3 thereof, has the effect of making Condition 29 a condition precedent.
>
> [1a] Where a term in a policy is stipulated to be a condition precedent, the insurer is not liable if the insured is in breach of the condition. *The condition, further, needs to be strictly complied with and it is also settled law that the insurer is not required to show that it was prejudiced by the breach.* It follows that the breach of Condition 29 per se, without more, was sufficient for the defendants to repudiate liability.

See also the recent case of *Jupiter Securities Sdn Bhd v American Home Assurance Company* [2008] 9 CLJ 131 which followed the decision in *Putra Perdana*'s case.

[17] The investigations conducted by McLaren and Forensic Services (M) Sdn Bhd ('Forensic') revealed that the plaintiff has breached various provisions of FEA Warranty I, FEA Warranty II and FEA Warranty III. The breaches are stated as below.

i) Portable Fire Extinguishers

[18] According to SD1, *Figure 1* of her report (*exh D40*) shows the location of the portable fire extinguishers in the plaintiffs premises. There were nine portable fire extinguishers except the one located on the upper floor of the double-storey block had valid certification. This is breach of General Requirements 1 (6) of FEA Warranty I which requires all portable fire extinguishers to be attached with a valid certificate from the Fire Services Department. The plaintiff's counsel did not challenge SD2's evidence on this issue during cross-examination. Hence, it is trite law that the plaintiff is deemed to have accepted SD's evidence on this issue — Federal Court decision in *Mohd Zaiham bin Mislan v Public Prosecutor* [2009] 6 MLJ 737; [2010] 1 CLJ 1.

[19] In addition, *General Requirements I* of the *FEA Warranty I* expressly states that '1 unit of approved portable extinguisher must be provided for every 210 square metre (2250 square feet) of open floor area or part thereof of floor area, with not less than 2 units on each floor.'

[20] Based on the investigation conducted by SD2, the total open floor area used for production and storage included the area under the lean-to as well as the awning extended from the right side of the factory building where there were significant fuel load store thereat. Adding to the floor area under the

awning and the lean-to, the total open floor area of the factory was about 36400 square feet. It should be noted that lean to and the awnings were not part of the original structure of the factory and were added before the said fire occurred.

[21] According to the requirement of the said warranty, the plaintiff must have 17 units of portable fire extinguishers in the factory as opposed to just nine units. And additional one unit is also required on the first floor. SD2 was informed by SP2 (the supplier/installer of the fire protection system) that the allocation and approval of the numbers of portable fire extinguishers in the factory building was based on the floor are indicated on the construction drawing of the main factory building only and excluded the lean-to and awning which have extended the open floor area at the factory.

[22] Thus, the plaintiff has failed to provide sufficient numbers of fire portable extinguishers at the factory at the material time of the fire and therefore in breach of General Requirements I of FEA Warranty I. Further, the plaintiff via its pleading at para 9 (i) of the Re-Amended Reply has expressly admitted that it has only complied with the requirement of the Fire Brigade Department in the provision of number of fire extinguishers and not the requirement under General Requirements I of FEA Warranty I.

[23] The said admission is further evident from the plaintiff's letter dated 3 Febuary 2004 (exh P30) wherein the plaintiff confirmed in writing that the plaintiff had only complied with the guideline set out by the fire brigade department on the number of portable fire extinguishers to be placed in the factory. The compliance with the requirements of the fire brigade department is insufficient as General Requirements I of FEA Warranty I imposes a higher requirement for the numbers of fire portable extinguishers to be placed at the factory which the plaintiff has warranted to comply with pursuant to the policy in question.

[24] As for the plaintiff's contention that the lean-to and the awnings which were added to the four sides of the factory did not extend the open floor area there were ample photographic evidence to show otherwise. The following photographs clearly show that the lean-to and the awnings have the effect of converting the area underneath it into open floor area whereby the plaintiff has utilised the area for production and storage of raw materials together with semi-finished goods:

> Photographs 5, 6, 7, 8, 10, 11, 12, 13; photographs (Location-DR1) (Location DR2), (Location DR4 & DR5) and (Location D).

[25] The lean-to and the awnings essentially covered the entire 'laluan area'

which was mean for passage (vehicle of otherwise) — see photographs (Location D). The lean-to and the awnings were extended to the boundary of the factory and converted the: area underneath into open floor area for work. Photograph 5 (exh 36B) clearly shows that the plaintiff had closed the entire 'laluan area'. In fact, SP4 gave untruthful evidence during cross-examination whereby he testified that the lean-to and the awnings were only meant for ease of loading and unloading during rainy period. However, the photographs stated above shows that the plaintiff has utilised the area for production and storage of raw materials together with semi-finished goods.

[26] The plaintiff has also pleaded in its re-amended reply that the defendant and/or its agents had represented to them that the extended area through the lean-to and the awnings did not increase the risk of loss or fire. The plaintiff failed to provide any evidence of such representation ever been made.

[27] Similarly, there is no evidence the defendant and/or its agents had represented to the plaintiff that the number of portable fire extinguishers at the factory was satisfactory. The plaintiff has wrongly relied on the information stated in the Fire Survey Report as the said report was prepared prior to the inception of the first policy and before the plaintiff decided to extend the open floor area through the lean-to and the awnings. All material times, the defendant and/or its agents did not make any survey at the factory during the currency of the first policy and renewal policy. The duty remains with the plaintiff to comply with General Requirements I of FEA Warranty I.

[28] Further, Maintenance Requirements I of FEA Warranty I requires the portable fire extinguisher to be inspected on weekly basis. The plaintiff vide their letter dated 3 February 2004 has submitted some documents suggesting that prior to the said fire, they have inspected the portable fire extinguisher on weekly basis. However, SP4, gave an earlier statement on 13 September 2003 to the loss adjusters (Appendix B1) which contradicts the plaintiff's explanation vide their letter dated 3 February 2004. In this statement dated 13 September 2003, SP4 states that the inspections were usually done before the expiry of the portable fire extinguishers.

[29] In addition, the authenticity of the maintenance record at exh P18 is doubtful as pointed by the defendant at pp 23 and 24 of its written submission.

(ii) Hose Reels System

[30] In SD2's report at pages 2-3, her inspection at the pump room revealed the following:

(a) The battery for the standby pump was flat and the fuel oil tank was near empty. Photographs show that the fuel-level of the standby pump was near empty,

(b) The switch for the pump was on manual; and

(c) There were cobwebs over the pump set and auxiliary equipment as well as dust deposits indicating that it would have been some months since testing and maintenance work had been carried out.

[31] Although she was cross-examined extensively by the plaintiff's counsel, her evidence was not shaken. In fact, the plaintiff has failed to adduce any evidence to challenge her findings of cobwebs on moving parts of pump. If maintenance or inspection were indeed performed as alleged, it is impossible for cobwebs to form thereat. Thus, the plaintiff has clearly breached Maintenance Requirements II of FEA Warranty II.

[32] Further, during cross-examination SP2 testified that the battery supplied to the factory for the standby pump would last three years. If the plaintiff did inspect the battery on a weekly basis as alleged, the battery would not be flat. Besides, it is also doubtful whether SP2 did provide any maintenance for the fire fighting facilities at the factory and the reasons are as follows:

(a) Union Fire Sales & Service is a company that specialises in the maintenance of fire fighting facilities. As such, it is expected of them to have records of each and every maintenance was conducted free of charge for otherwise;

(b) According to SP2's testimony, the warranty period has ended in August 2002. If the paid maintenance did take place only beginning of January 2003, that would mean that the fire fighting facilities at the factory was not maintained for a period of four months leading to January 2003 although he claimed that the maintenance is important to ensure that the fire fighting facilities were in good working conditions; and

(c) Neither SP2 nor the plaintiff were able to produce any invoice or receipt for the payment of the maintenance allegedly performed by Union Fire Sales & Service

[33] In addition, the plaintiff vide their letter dated 3 February 2004 (Appendix 2) — claimed that:

(a) SP8 has switched off the pump after he noticed that the fire brigade team has used their facilities to put out the fire;

(b) The pump was switched off to protect it from over heating; and

(c) The fuel for the pump was low because it was running for some time during the said fire.

[34] However, McLaren's investigation reveals that:

(a) Encik Halim bin Mustafa (the fire station chief) has confirmed that the fire brigade team did not enter the pump room. SP1 also confirmed the same;

(b) In his statement (*Appendix B1*), SP4 stated that he is not aware that the switch for the standby pump was put to 'off position but claimed that someone could have entered the pump room and turned the switch off during the said fire;

(c) Mr. Tay Boon Seng in his statement dated 11 September 2003 (Appendix B2) stated that he is not aware whether the engine in the pump room was working or not prior to the said fire as he did not enter the pump room; and

(d) As for SP8, he has given a statement dated 9 September 2003 (Appendix B3) stating that he does not 'know about the pump house control panel as the best person to ask is SP4.

[35] The plaintiff has breached General Requirements II (9) & (10) of FEA Warranty II. The plaintiff does not have any proof of having performed the necessary maintenance of the hose reels system.

(v) Hydrant System

[36] According to SD1, McLaren's investigation revealed that the internal hydrant was not protected against mechanical impact as required by General Requirement III (5) of FEA Warranty III. The plaintiff does not have any proof of having performed the necessary maintenance of the hydrant system. Thus, the plaintiff has breached Maintenance Requirements III of FEA Warranty III

(vi) Trained Private Fire Brigade

[37] Although SP4 testified that the plaintiff has a trained private fire brigade consisting of the directors and the workers, in actual fact the plaintiff do not have a trained private fire brigade because SP4 has previously given a contradictory statement stating that the plaintiff does not have a fire fighting squad (answer to Question 13 Appendix B1). Further, the plaintiffs foreign workers have also given statements confirming that they were not taught to use the fire fighting facilities in the factory (Appendix B4 – B11). Thus, the plaintiff has breached General Requirement III (6) of FEA Warranty III.

THE CONCLUSION

[38] At all material time, the plaintiff had enjoyed discounted insurance premiums on the condition that the plaintiff must comply with the FEA

Warranties stipulated in the first policy and the renewal policy. The plaintiff has never complained to or informed the defendant that the terms of FEA Warranty I, FEA Warranty II and FEA Warranty III were disagreed upon. In fact, the plaintiff pleaded that they have complied the said requirements.

[39] Unfortunately for the plaintiff, the evidence adduced by the defendant clearly shows that the plaintiff has breached the terms of FEA Warranty I, FEA Warranty II and FEA Warranty III whose strict compliance is condition precedent to the defendant's liability under the renewal policy.

[40] As such, the plaintiff has failed to discharge its burden of proving its claim on the balance of probability. Therefore, the plaintiff's claim be dismissed with costs to be taxed.

Plaintiff's claim dismissed with costs to be taxed.

Reported by Kanesh Sundrum